



NGAUS Fact Sheet

Understanding the Guard's Duty Status

Many events trigger responses across multiple jurisdictions and different levels of government. The National Guard is exceptionally suited for its Homeland Defense role due to its geographically dispersed forces with links to local communities and ties to state and local governments. These relationships allow for rapid and integrated responses in times of emergency. Because of its unique dual constitutional authority, the National Guard serves to bridge the "zone of ambiguity" across State and Federal government boundaries.

The National Guard is the only United States military force that operates across both State and Federal responses, leveraging State Active Duty (SAD), Full-Time National Guard Duty (Title 32) and Active Duty (Title 10). While SAD, Title 32 and Title 10 are different statuses and roles, they provide mutually supporting capability.

In the 2010 National Defense Authorization Act, Congress passed legislation which partially eliminated mutual exclusivity with regard to Chain of Command, allowing specially designated National Guard officers to command forces in both Title 10 and Title 32 statuses – designated as a Dual Status Commanders.

State Active Duty (SAD)

The Governor can activate National Guard personnel to "State Active Duty" in response to natural or man-made disasters or Homeland Defense missions. SAD is based on State statute and policy as well as State funds. Soldiers and Airmen remain under the command and control of the Governor. A key aspect of this duty status is that the Posse Comitatus Act does not apply, giving National Guardsmen the ability to act in a law enforcement capacity within their home state or adjacent state if granted by that state's Governor.

Title 32 Full-Time National Guard Duty

"Full-time National Guard Duty" means training or other duty, other than inactive duty, performed by a member of the National Guard. Title 32 allows the Governor, with the approval of the President or the Secretary of Defense, to order a member to duty for operational Homeland Defense activities in accordance with the following sections of U.S. Code (USC):

1. 32 USC 502 (f): This statute allows member of the National Guard to be ordered to full-time National Guard duty to perform operational activities. It was used for the Airport Security mission after 9/11 and also for Hurricane Katrina and Rita response effort.
2. 32 USC § 901: The term "Homeland Defense activity" means an activity undertaken for the military protection of the territory or domestic population of the U.S., or of infrastructure or other asset of the U.S. determined by the Secretary of Defense as being critical to national security and at risk of a threat or aggression against the U.S.
3. 32 USC § 902 - Homeland Defense activities: funds. (a) The Secretary of Defense may provide funds to a Governor to employ National Guard units or members to conduct Homeland Defense activities that the Secretary determines necessary and appropriate for participation by the National Guard or members.

The key to this instance is that Federal Law provides the Governor with the ability to place a soldier in a full-time duty status under the command and control of the State but is directly funded with Federal dollars. Even though this duty status is authorized by Federal statute, this section is a statutory exception to the Posse Comitatus Act; the Governor may use the Guard in a law enforcement capacity while the chain of command rests in the State.

Title 10 Active-Duty

"Active duty" means full-time duty in the active military service of the U.S. Title 10. It allows the President to "federalize" the National Guard forces by ordering them to active duty in their reserve component status or by calling them into Federal service in their militia status in accordance with the following USC sections:

1. 10 USC § 12301 (d) - Voluntary Order to Active Duty: At any time, a member of the National Guard may be ordered to active duty voluntarily with his or her consent and the consent of the Governor.

2. 10 USC § 12302 – Partial Mobilization: In time of national emergency declared by the President, the Secretary concerned may order any unit and any member to active duty for no more than 24 consecutive months.
3. 10 USC § 12304 – Presidential Selected Reserve Call Up: When the President determines that it is necessary to augment the active force or any operational mission, he may authorize the service secretaries to order any unit and any member to active duty for not more than 365 days.
4. 10 USC § 331 – Federal Aid to State Governors: Whenever an insurrection occurs in any State against its government, the President may, upon the request of its legislature or of its Governor, if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection. This section is a statutory exception to the Posse Comitatus Act.
5. 10 USC § 332 – Use of Militia and Armed Forces to Enforce Federal Authority: Whenever the President considers that unlawful obstructions, combinations, assemblages, or rebellion against the authority of the U.S., make it impractical to enforce the laws of the U.S. in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces as he considers necessary to enforce those laws or to suppress the rebellion. This section is a statutory exception to the Posse Comitatus Act.
6. 10 USC § 333 – Interference with State and Federal Law: The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy if it:
 - a. So hinders the execution of the law of that State, and of the U.S. within the State, that any part or class of its people is deprived of a right, privilege, immunity or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail or refuse to protect that right, privilege, or immunity, or to give that protection; or
 - b. Opposes or obstructs the execution of the laws of the U.S. or impedes the course of justice under those laws. In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.
7. 10 USC § 12406 – Air and Army National Guard: Air and Army National Guard call into Federal service in case of invasion, rebellion or inability to execute Federal law with active forces.

	SAD	Title 32	Title 10
Command and Control	State Governor	State Governor	President
Who Performs Duty	The Militia	The Federally-recognized militia (i.e. National Guard)	Active Component, Reserve Component and National Guard
Where Duty Performed	Continental US in accordance with State Law	Continental United States	Worldwide
Pay	In Accordance with State Law	Federal Pay & Allowances	Federal Pay & Allowances

Additional Laws and Authorities

Stafford Act (42 USC § 5121) - designed to bring an orderly and systemic means of federal natural disaster assistance for state and local governments in carrying out their responsibilities to aid citizens. Congress' intention was to encourage states and localities to develop comprehensive disaster preparedness plans, prepare for better intergovernmental coordination in the face of a disaster, encourage the use of insurance coverage, and provide Federal assistance programs for losses due to a disaster.

Posse Comitatus Act (18 USC § 1385)